IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10761 of 1995
with
SPECIAL CIVIL APPLICATION NO 10762 OF 1995

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAMANSING RAMKISHAN

Versus

THE STATE OF GUJARAT AND ANOTHER

Appearance:
1. Special Civil Application No. 10761 of 1995
M/S S & S ASSOCIATES for Petitioner No. 1
NOTICE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 08/12/2004

ORAL JUDGEMENT

#. In both these petitions, the respective petitioners have challenged the legality and validity of the order passed by the respondent no. 2 Dy.Collector, Stamp Duty

Valuation, Surat City by which respondent no. 2 has directed respective petitioners to make the payment of deficit stamp duty along with Rs.250/- by way of penalty in exercise of the powers under Section 32-A of the Bombay Stamp Act ("the Act" for short).

#. In special civil application no. 10761 of 1995, document came to be executed on 02.01.1990 being registration no. 105 with Sub-Registrar, Surat. In special civil application no. 10762 of 1995, document came to be executed on 06.06.1989 being registration no. 7329 with Sub-Registrar, Surat. In both these cases, the Dy.Collector, Stamp Duty Valuation, Surat City exercised the power under Section 32-A of the Act and initiated the proceedings after a period of more than three years. It appears that the notice under Rule 4 came to be issued and thereafter final order came to be passed in the month of November, 1995 directing each petitioner to pay deficit stamp duty and also to pay the amount of Rs.250/by way of penalty which are the subject matter of the present special civil applications.

#. It is true that in none of the cases, the petitioners have preferred revision applications before the revisional authority and straightaway the present special civil applications are filed under Article 226 of the Constitution of India. However, in view of the fact that the petitions are of 1995, which have been admitted by this Court, it will not be proper now to relegate the petitioners to prefer the revision applications and therefore the present petitions are decided on merits.

#. Learned advocates appearing for the respective petitioners have assailed the impugned orders on the following grounds :

"1. Exercise of the powers by respondent no.2 authority under Section 32-A of the Act is after unreasonable period and that the same is illegal and arbitrary and the same could not have been exercised without even justifying the delay as held by the Full Bench of this Court in the case of Gorwa Vibhag Cooperative Housing Society Ltd. V/s State of Gujarat reported in 1992(1) G.L.R. 654.

2. No procedure as required to be followed under Rule 4 is followed while determining the market value and call upon the petitioners to make the payment of deficit stamp duty.

3. The impugned order passed by respondent no.

2 Dy.Collector is a non-speaking order and no reasons are assigned while fixing the amount of market value and there is no basis mentioned in the impugned order justifying the market value which is determined by respondent no. 2 on the basis on which the petitioners are now directed to make the payment by way of deficit stamp duty."

#. Learned advocates appearing on behalf of the respective petitioners, have relied upon the judgments of the Full Bench of this Court in the case of Gorwa Vibhag Cooperative Housing Society Vs. State of Gujarat, reported in 1992(1) GLR 654, unreported judgment of the learned Single Judge of this Court in the case of Ambuja Metal Industries Private Limited Vs. State of Gujarat rendered in Special Civil Application No.6554 of 2000 with Special Civil Application No.2794 of 2001, unreported judgment of the learned Single Judge of this Court in the case of Kumarpal rendered in Special Civil Application No.4434 of 2003 and another unreported judgment of the learned Single Judge of this Court in Special Civil Application No.1258 of 2003 in support of his submission that respondent No.2 should not have exercised the powers after a period of 3 years of presenting the document and that exercise of the powers by respondent No.2 after unreasonable period itself was illegal and the order on the basis of that is nullity.
#. No affidavit-in-reply is filed on behalf of the respondents, i.e. no explanation whatsoever is given by the respondent authority justifying the delay in exercise of the powers after a period of 3 years. Mr.Mengdey, learned AGP is not able to explain the delay in exercise of the powers.

#. It is an admitted position that respondent no. 2 has exercised the powers under Section 32-A of the Act after a period of more than three years. There is no affidavit-in-reply filed on behalf of the respondents justifying the delay in initiation of the proceedings. There is also no affidavit-in-reply justifying the market price which is fixed by respondent no. 2.

#. Considering the judgement of the Full Bench in the case of Gorwa Vibhag Cooperative Housing Society (supra) and even subsequent to the Full Bench's judgment in the case of Shamjibhai Jadavji Variya Vs. Sub-Registrar, Vadodara, reported in 1996(3) GLR 783, in absence of any justification for delay in exercise of the powers, respondent No.2 could not have exercised the powers and

initiated the proceedings almost after a period of 7 years. This Court in Special Civil Application Nos.654 of 2000, 12581 of 2003 and 4434 of 2003 has been pleased to quash and set aside the orders passed by the authority under the Bombay Stamps Act when the powers are exercised after a period of almost 3 to 4 years.

#. Considering the judgment of the Full Bench of this court in the case of Gorwa Vibhag Cooperative Housing Society (supra), the respondent no.2 could not have exercised the powers after a period of two years on the basis of the reference made by the Sub-Registrar. However, in a subsequent Full Bench decision in the case of Shamjibhai Variya (supra), Full Bench of this Court has clarified the position and has held that the Registering Officer under sub-section 1 of Section 32-A of the Act can exercise the powers beyond two years on the facts justifying the delay. As stated above, there is no explanation whatsoever on the part of respondent no. 2 justifying the delay in exercise of powers after a period of more than two years. Learned Single Judge of this Court in the judgment and order dated 05.12.2001 passed in special civil application no. 654 of 2000 and connected matters has quashed and set aside the order passed by the authority under the Act. However, powers were exercised beyond the period of two years without justifying the delay, another learned single Judge also in the judgment and order dated 11.08.2003 in special civil application no. 4434 of 2003 has quashed and set aside the order passed by the authority under the Act when the powers were exercised by the authority after unreasonable period. Even in the case of Dinesh Pandya (supra), another learned single Judge of this Court has also relied on the judgment and order dated 05.12.2001 in special civil application no. 654 of 2000 has set aside the order passed by the authority under the Act where the powers were exercised after unreasonable period i.e. beyond the period of two years without justifying the delay.

##. Considering the judgments referred to above, the orders passed by respondent no. 2 in exercise of powers under Section 32-A of the Act are required to be quashed and set aside on the ground that exercise of powers by respondent no. 2 without justifying any delay is arbitrary, illegal and respondent no. 2 should not have exercised the powers without justifying delay. There is another aspect of the matter also to the effect that in the impugned orders the respective petitioners were directed to pay deficit stamp duty are non-speaking orders. Nothing has been mentioned in the orders

justifying the fixation of the market value by respondent no. 2. There is no basis mentioned and/or discussed by respondent no. 2 in his orders fixing the market value other than the market value which is considered by the respective petitioners. Under the circumstances also, the impugned orders are required to be quashed and set aside.

##. Considering the aforesaid facts and circumstances of the case, both the petitions succeed and impugned orders passed by respondent no. 2 Dy.Collector Stamp Duty Valuation are hereby quashed and set aside.

Rule is made absolute with no order as to costs.

(M.R.Shah,J)

(pathan)